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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,526	10/26/2000	Dan Vassilovski	990301	6563

23696 7590 06/25/2009

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EXAMINER	
KANG, INSUN	

ART UNIT	PAPER NUMBER
2193	

NOTIFICATION DATE	DELIVERY MODE
06/25/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/698,526	VASSILOVSKI ET AL.	
	Examiner	Art Unit	
	INSUN KANG	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 April 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *49-85* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-85* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date. _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responding to RCE amendment filed on 4/14/2009.

2. Claims 49-85 are pending and have been examined.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 49-85 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Per claims 49, 59, 69, and 77, the specification describes determining authentication of resident software and available software to load. There is no description of determining the authentication status of the computing device…changing the computing device's authentication status to positive…if the computing device's authentication status is determined to be negative and the resident software's authentication status is determined to be positive. Also see the fig. 2. There is no description of changing the computing device's authentication status to positive and loading the available software if the computing device's authentication status is determined to negative (assuming, it corresponds to "NO" in Fig. 2) and the resident software's authentication status is determined to be positive.

Per claims 50, 60, 70, and 78, the specification states that once an authentication flag is set, it normally cannot be reset in page 6. However, it does not state that the authentication status of the computing device cannot be changed from positive to negative.

Per claims 51, 61, the specification states that the piece of authenticated software is determined by the flag comprising a hardware fuse, however, it does not state that the computing device's authentication status is represented by the hardware fuse. Furthermore, the specification does not further develop to state that the computing device's authentication status is changed to positive…after the hardware fuse is blown.

Per claims 52, 62, and 79, the specification only describes that authentication flag is set for determining software authentication.

Per claims 54, 64, 72, and 82, the specification does not describe separate authentication flags of the plurality of resident software programs.

Per claims 53, 55, 56-59, 63, 65-69, 71, 73-77, 80, 81, and 83-85 are rejected based on dependency on claims 49, 59, 69, and 77.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 49-85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Per claims 49 and 59, it is unclear what "an application area" in line 3 means. Interpretation: an application storage area.

Per claims 49, 59, 69, and 77, in the claims, "the computing device's authentication status is determined to be negative if none of the resident software has been authenticated," therefore, the claim limitation, "changing the computing device's authentication status to positive… if the computing device's authentication status is negative and the resident software's status is positive" is contradictory because the computing device's authentication status cannot be negative if the resident software's status is positive according to the first condition in the claims.

Per claims 56-58, 66-68, 74-76, and 83-85, it is unclear whether the at least one piece is a program belong to one resident software or one of many resident software in the computing device. Interpretation: one of many resident software in the computing device. Correction is required.

Per claims 50-55, 60-65, 70-73, and 78-82 are rejected based on dependency on claims 49, 59, 69, and 77.

Specification

7. In page 6, in line 20, "computing device 102" appears to be corrected to "computing device 100" as 102 refers to a processor in Fig. 1.

In page 8 line 18, it appears that "If the available software is authenticated, it is loaded onto…as shown in step 210" needs to be corrected, because the available software is loaded onto the computer device, if it is not authenticated in 204 according to fig. 2. Therefore, the portion appears to be corrected to "If the available software is not authenticated, it is....210."

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The term, "computer-readable medium" in claims 69-76

is not defined in the specification. The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import. The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. See MPEP § 2111.01 and § 2173.05(a), 608.01(o) [R-3], 608.01(i), 1302.01, and 37 CFR 1.75 and 1.58(a). The appropriate term that is supported in the disclosure needs to be used in the claims.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 69-76 are directed to non-statutory subject matter. The specification does not provide antecedent basis for the exact terminology “a computer-readable medium.” The explicit and deliberate definition of the terminology, “a computer-readable medium" has not been provided but the intrinsic evidence of embodiments intended to be covered within the meaning is provided. The intrinsic evidence in page 4 lines 20-21 shows that the medium can be a data signal embodied in a carrier wave/rays etc that is used as a wireless communication system. Such medium does not have a physical structure, rather it is the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism per se which does fit within the definition of the categories of patentable subject matter set forth in § 101. Therefore, the claims are non-statutory. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35

U.S.C. §101. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 49, 50, 52, 54-60, 62, 64-70, 72-79, and 81-85 are rejected under 35 U.S.C. 102(e) as being anticipated by **Safadi** (USPN 6,742,121).

Per claim 49:

Safadi discloses:

A method for software configuration management for a computing device having an authentication status, the method comprising: receiving a request to load available software into an application area of the computing device (i.e. col. 7 lines 45-61);

determining the authentication status of the computing device, wherein the computing device's authentication status is positive if at least one piece of the computing device's resident software has been authenticated, and the computing device's authentication status is negative if none of the computing device's resident software has been authenticated (i.e. col. 7 lines 45-61);

determining an authentication status of the available software, wherein the available software's authentication status is positive if the available software has been authenticated by the computing device, and the available software's authentication status is negative if the available software has not been authenticated by the computing device (i.e. col. 8 lines 23-48); and

changing the computing device's authentication status to positive and loading the available software if the computing device's authentication status is determined to be negative and the resident software's authentication status is determined to be positive (i.e. col. 8 lines 45-67; col. 9 lines 1-8).

Per claim 50:

Safadi further discloses:

wherein the authentication status of the computing device cannot be changed from positive to negative (i.e. col. 7 lines 55-61).

Per claim 52:

Safadi further discloses:

wherein the authentication status of the computing device is indicated by a flag (i.e. col. 8 lines 63-67; col. 9 lines 1-8).

Per claim 54:

Safadi further discloses: the computing device's resident software comprises a plurality of resident software programs; each resident software program has a separate authentication flag to indicate its authentication status; and computing device's authentication status is determined using the separate authentication flags of the plurality of resident software programs (i.e. col. 8 lines 63-67; col. 9 lines 1-8).

Per claim 55:

Safadi further discloses:

loading the available software if the computing device's authentication status is determined to be positive and the resident software's authentication status is determined to be positive, or if the computing device's authentication status is determined to be negative and the resident software's authentication status is determined to be negative; and rejecting the .available software if the computing device's authentication status is determined to be positive and the resident software's authentication status is determined to be negative (i.e. col.8 lines 23-41).

Per claim 56:

Safadi further discloses: wherein the at least one piece of the computing device's resident software is unrelated to the available software (i.e. col. 7 lines 45-61).

Per claim 57:

Safadi further discloses:

wherein the at least one piece of the computing device's resident software corresponds to the available software (i.e. col. 7 lines 45-61).

Per claim 58:

Safadi further discloses: wherein the at least one piece of the computing device's resident software is operating system software (i.e. col. 7 lines 45-61).

Per claims 59, 60, 62, and 64-68, they are device versions of claims 49, 50, 52, and 54-58, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 49, 50, 52, and 54-58 above.

Per claims 69, 70, and 72-76, they are medium versions of claims 49, 50, and 53-58 respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 49, 50, and 53-58 above.

Per claims 77-79 and 81-85, they are apparatus versions of claims 49, 50, and 52-58, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 49, 50, and 52-58 above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 51 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Safadi** (USPN 6,742,121) in view of admitted prior art (herein referred to as **APA**).

Claim 51:

Safadi does not explicitly state: the computing device's authentication status is represented by a hardware fuse; and the computing device's authentication status is changed to positive by blowing the hardware fuse using an electrical current, whereby the computing device's authentication status is negative before the hardware fuse is blown, and the computing device's authentication status is positive after the hardware fuse is blown. However, **APA** demonstrated that it was known at the time of invention to utilize such a hardware fuse (Specification, page 6, lines 9-22). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teachings of **APA** into the system and method of **Safadi**. This implementation would have been obvious because one of ordinary skill in the art would be motivated to perform the well-known authentication techniques to check to determine the authentication status in order to improve the performance of a computing system.

Per claim 61, it is the device version of claim 51, respectively, and is rejected for the same reasons set forth in connection with the rejection of claim 51 above.

13. Claims 53, 63, 71, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Safadi** (USPN 6,742,121).

Per claim 53:

Safadi does not explicitly disclose that the end user devices include a portable wireless communication device. However, it would have been obvious for one having ordinary skill in the pertinent art to modify Safadi's disclosed system to include such a wireless device. The modification would be obvious because one having ordinary skill in the art would be motivated to authenticate software in a wireless device by using the Safadi's authentication method when the wireless device is preferably used.

Per claims 63, 71, and 80, they are the device, medium versions of claim 53, respectively, and are rejected for the same reasons set forth in connection with the rejection of claim 53 above.

Response to Arguments

14. Applicant's arguments with respect to claims 49-85 have been considered but are moot in view of the new ground(s) of rejection.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The examiner can normally be reached on M-R 7:30-6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock, Jr. can be reached on 571-272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/

Primary Examiner, Art Unit 2193